IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.17638 of 2007
ZAKIR HUSSAIN & ORS
Versus
STATE OF BIHAR

For the Petitioners : Mr. Sanjay Kumar, Advocate.
For the State : Mr. A.M.P. Mehta, A.P.P.

O R D E R

The six F.I.R. named accused of Sessions Trial No.599 of 2002 , arising out of Bikramganj P.S. Case No.225 of 2000, have prayed for the quashing of the order dated 9.6.2006 passed therein by the learned Presiding Judge, Fast Track Court No.II, Rohtas at Sasaram, whereby he has been pleased to reject their petition under Section 228 Cr.P.C. for transmitting the case back to the court of the learned Chief Judicial Magistrate as no case exclusively triable by the Court of Sessions has been made out against them.

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The prosecution case as made out in the written report submitted at 2.30 P.M. on 17.11.2001 by one Dr. Zahirul Hasan of Lucknow, inter alia, is that on receipt of a telephonic message in the previous night to the effect that his daughter Wahida Begum alongwith her three minor daughters had been murdered jointly by his son-in-law, Zakir Hussain, and his family members, he had arrived at the matrimonial home of his daughter from Lucknow and found the household folks missing. He claimed to have gone to Bikramganj P.S. alongwith his family members, where he was informed that his daughter and three minor children were sprinkled with acid by his son-in-law and his family members and they had escaped thereafter.

The occurrence is said to have taken place on the night of Diwali, i.e. 14.11.2001 when people of the village in the evening had seen Zakir, his elder brother, father, mother, sister, niece and a relative belonging to Sasaram, all of whom were absconding from the morning of 15.11.2001. The pungent smell emanating from the dead body had attracted the attention of the neighbours who had informed the police and the matter had become known to all the villagers. It has also been alleged that the son-in-law and his family members frequently assaulted Wahida for non-fulfillment of dowry demand and also coerced her to bring money from the father. For the said purpose Wahida had filed Bikramganj P.S. Case No.225 of 2000 alleging offences under Sections 307/498-A/573/34 and other allied Sections of the Penal Code as also 3/4 of the Dowry Prohibition Act wherein Zakir Hussain, his father, Shahgani Haider, mother-in-law, Munni Begum, nanad, Keshwari Begum, nephew, Appu Shah, Pappu Shah and Hashim Shah, were arrayed as accused and they had gone to jail and it was only on the mischief and machination of their relative Dr. Wasim Ahmad , a compromise was entered into and on the basis thereof they had obtained bail and thereafter brought back the complainant from Lucknow to the matrimonial home. It is also said that two days prior to the occurrence when the complainant had talked with his daughter over telephone she had informed that Zakir's uncle and brother had arrived from Kolkata and they were all locked up in a room and engaged in discussion and she was not aware of the result. It is also alleged that Zakir's marriage with Wahida was his third

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marriage and the two earlier wives had also been killed.

On the basis of the said written report, Bikramganj P.S. Case No.200 of 2001 came to be registered under Sections 302/201/34 I.P.C. and after due investigation chargesheet under Sections 307/379/498-A and other allied Sections of the Penal Code and 3/4 of the Dowry Prohibition Act was submitted and cognizance thereunder was taken by the learned Sub Divisional Judicial Magistrate, Bikramganj at Sasaram.

It has been submitted by the learned counsel for the petitioners that since no offence under Section 307 I.P.C. appeared to have been made out against the petitioners even from the materials in the case diary and from the statement of the witnesses, a petition under Section 228 Cr.P.C. was filed for transmission of the case to the court of the learned Chief Judicial Magistrate since no offence exclusively triable by the court of Sessions was made out. The learned counsel referred to the injury reports which reveal that deceased, Wahida Begum, had four injuries , namely, an abrasion over forearm, bruise 1" X 1/2" over wrist, bruise 2" X 3/4" over occipital region and bruise 2 ½" X 1/4" on abdomen , all of which were simple in nature , caused by hard and blunt substance and submitted that from the said injuries no offence under Section 307 I.P.C. can be said to have been made out and as such the case should go back to the court of the learned Chief Judicial Magistrate under the provisions of Section 228 Cr.P.C.

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Mere injury caused to the injured is not sufficient to make

out an offence. Several other things are attached therewith. In order to amount to an attempt to murder, the act attempted must be such that if not prevented or intercepted, it would be sufficient to cause death of the victim. To constitute the offence no injury need be caused to the victim. If in course of the attempt bodily injury is caused the accused would be liable to enhance punishment. To sustain conviction under Section 307 I.P.C. the intention to kill should be clearly proved by circumstances like persistence of attack on vital parts of the body or the assailant lying in wait armed with dangerous weapons or declarations made by him that the victim would be killed. The intention is not gatherable merely from the seriousness of resultant injury. (See Sarju Prasasd Vs. State of Bihar-AIR 1965 SC 843).

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The Sessions Court taking into account the attending circumstances and the whole circumspection of the matter in issue came to the finding that there was prima facie materials to make out an offence under Section 307 I.P.C. and as such he rejected the prayer of the petitioners and I find no apparent illegality, impropriety or irregularity in the said order which is hereby upheld.

In the facts and the circumstances of the case, I do not find any merit in this application which is dismissed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 26th of September, 2008.
Pradeep Srivastava/A.F.R.